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10/081,928	02/20/2002	Isreal Hicks	HICKS-1-1002	2184

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BLACK LOWE & GRAHAM PLLC  
816 Second Avenue  
Seattle, WA 98104

EXAMINER

CHAN, KO HUNG

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 10/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/081,928

Applicant(s)

HICKS, ISREAL

Examiner

Korie H. Chan

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-- Th MAILING DATE of this communication appears on th cover sh et with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 August 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 12-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-11, drawn to tire hanger, classified in class 248, subclass 301.
- II. Claims 12-20, drawn to method of using the tire hanger with a vehicle hoist to support vehicle tire, classified in class 254, subclass 2R.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case (1) the process for using the tire hanger relative to a hoist as claimed can be practiced with another materially different product such as a flexible strap to thread through the tire and suspend the tire and also (2) the product (the tire hanger) as claimed can be used in a materially different process of using that product the hanger can be used to suspend banana bunches or lighting onto a ceiling or drawer knobs.

Because these inventions are distinct for the reasons given above and the search required for Group II is not required for Group I, restriction for examination purposes as indicated is proper.

Newly submitted claims 12-20 are directed to an invention that is independent or distinct from the invention originally claimed for the reasons discussed above.

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Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 12-20 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "38" page 2, line 18. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The disclosure is objected to because of the following informalities: page 2, line 5, "pivitable" is misspelling of "pivotable".

Appropriate correction is required.

### ***Claim Objections***

Claims 1-20 are objected to because of the following informalities: The word "axle" is misspelled throughout the claims as "axel". Further, claims 4 and 7 are exact duplicates. Dependent claim 8 could have been dependent from claim 4 just as well which would eliminate the need for claim 7. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 10 and 11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 10 recites that the pivot joint can be rotatable about a plural axes however, there is no support in the specification that the joint (28, 30) is rotatable about plural axes.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1, last three lines are vague and indefinite as it appears to say that the middle section is of suitable length to engage an axle hole of a tire. However, it is the second end that is engaging the axle hole. Further, "to engage an axle hole of a tire in an approximately vertical orientation" is vague and indefinite as it is not clear whether applicant means direction of insertion of the hanger into the tire is

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vertical direction or that the tire is supported in a vertical orientation. Claim 2, "the hook" and "the axel" do not have proper antecedent basis.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Etbauer (US Patent no. 2,621,837). Etbauer discloses a tire hanger capable of being used with a vehicle hoist with a horizontal member comprising an elongated strip of material (figure 3) having a first bent end (22, figure 3) to engage a horizontal member (15) and a second bent end (24, figure 3) engaging the axle hole of a tire in an approximate vertical orientation and an elongated middle section (21, figure 3) to extend the hook from the horizontal member. Regarding claim 2 as best understood, the hook shaped second end is capable of performing the intended function as claimed if it were supported on a vehicle hoist.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Tidwell (US Patent no. 3,865,291). Tidwell discloses a tire hanger capable of being used with

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a vehicle hoist with a horizontal member comprising an elongated strip of material (100, figure 9) having a first bent U-shaped end (100', 100'', figure 9) to engage a horizontal member (101) and a second bent end (portion of 100 engaging the axle hole extending from 66 to 74, figure 3 for example) engaging the axle hole of a tire in an approximate vertical orientation and an elongated middle section (24, figure 2) to extend the hook from the horizontal member. Regarding claim 2 as best understood, the second end is of hook shaped which is capable of performing the intended function as claimed if it were supported on a vehicle hoist.

Claims 1, 2, 4, 7, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Bryngelson (US Patent no. 4,116,373). Bryngelson discloses a tire hanger capable of being used with a vehicle hoist with a horizontal member comprising an elongate strip of material having a first bent end (12) secured to horizontal member (S), a second hook end (40) capable of engaging an axle hole of a tire and a middle section having a pivotable joint (32). Regarding claim 2 as best understood, the second hook shaped end is capable of performing the intended function as claimed if it were supported on a vehicle hoist.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bryngelson (US Patent no. 4,116,373) in view of Tidwell (US Patent no. 3,865,291). Bryngelson disclosed all the claimed features of applicant's invention except for the first end is of U-shaped. Tidwell teaches in a tire hanger of providing a U-shaped first end (100', 100'', figure 9) to secure to the horizontal member. It would have been obvious to one of ordinary skill in the art to modify the first end of Bryngelson such that it is of U-shaped as taught by Tidwell to eliminate the need to drill hole in the horizontal member.

Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Starling et al (US Patent no. 6,604,610) in view of Tidwell (US Patent no. 3,865,291). Starling discloses a tire hanger for use with a vehicle hoist comprising a tire hanger (120, figure 6) having a first end (130, figure 4) secured to the horizontal member and a second end being a hook (154) capable of engaging axle hole of the tire and a middle section having a pivotable joint with a pin (146), a bearing assembly (156), and frictional locking device (detent mechanism is provided to releasably hold arm 150, col. 5, lines 20-25). However, Starling does not disclose the first end is U-shaped. Tidwell teaches in a tire hanger of providing a U-shaped first end (100', 100'', figure 9) to secure to the horizontal member. It would have been obvious to one of ordinary skill in the art to modify the first end of Starling et al such that it is of U-shaped as taught by Tidwell to reduce the number of fastening elements.

### ***Conclusion***




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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The various art cited of record demonstrate hangers of tires of general state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Korie H. Chan whose telephone number is 703-305-8079. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie Braun can be reached on 703-308-2156. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

  
Korie H. Chan  
Primary Examiner  
Art Unit 3632

khc  
October 1, 2003